IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1991 of 2003
To
FIRST APPEAL No. 1992 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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THE PROJECT MANAGER - Appellant(s)
Versus
PATEL MAGANBHAI SHANKARDAS & 1 - Defendant(s)

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Appearance :
MR RR MARSHALL for Appellant(s) : 1,
MR PANKAJ K SONI for Defendant(s) : 1,
MR UDAY BHATT A.G.P. for Defendant(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 22/02/2007

ORAL COMMON JUDGMENT

1. In these appeals the appellant i.e., the Project Manager, O.N.G.C., Mehsana has raised limited challenge

to the judgment and award dated 24th September, 1993 made by the learned Extra Assistant Judge, Mehsana in Land Reference Case No. 1019/1987 and 1020/1987. The learned Judge while partly allowing the Reference cases filed by the respondents gave direction that the respondent/applicant will be entitled to get additional amount of yearly rent at the rate of Rs.75=00 per Are over and above the rent fixed by O.N.G.C., from time to time with interest at the rate of 9% from the due date till the date of realization. According to the appellant such direction cannot be given since, the rent that may be fixed by O.N.G.C., can turn out to be just and adequate in the circumstances of the case and such direction may cause unjust enrichment. Mr. R. R. Marshall learned advocate for the appellant has submitted that this Court in the identical facts has delivered decision dated 21st March, 2006 in First Appeal No. 792 of 2003 and its allied matters, upholding the contentions of the appellant. In paragraph 5.2., 5.3 and 6 of the said decision, this Court has observed as under :-

> “5.2. On the facts of the case, it is evident that the Reference Court has also determined the further rent which issue was not before it. I am, therefore, of the opinion that the contention raised by the learned advocate for the appellant that the observation or direction issued by the Reference Court in the operative part of the orders require to be quashed and set aside, is required to be accepted. If the said direction is allowed to remain then it would

amount to granting the rent which is over the rent fixed by the appellant – O.N.G.C., from time to time. Moreover, the same has been fixed without considering as to what would be the future rent fixed by the appellant – O.N.G.C., which is beyond the scope of reference. Hence, if the said observation is allowed to remain then, in that even such compensation would be much more than the amount which has been found to be adequate by the Court.

5.3. It may be noted that the Reference Court was dealing with a particular acquisition and it was not open for the said Court to pass an order in respect of future rent. Such an observation on the part of the Reference Court is clearly bad in law in view of the provisions of Section 35 (3) of the Act. In that view of the matter, the observations or direction issued by the Reference Court with regard to additional amount of compensation, requires to be quashed and set aside.

6.0. In the result, these appeals are allowed. The observation “over the rent fixed by O.N.G.C., from time to time with running interest at the rate of 9% per annum from the date of the due date of running till the day of payment is made”, made by the Reference Court in the operative part of the impugned judgments and awards, quashed and set aside. These appeals are allowed to the aforesaid extent. Rule is made absolute to the aforesaid extent with no order as to costs.

2. In view of the same, these appeals are required to be allowed and they are allowed. The order to the extent it directs payment of Rs.75=00 per Are “over the rent fixed by O.N.G.C., from time to time with 9% interest from the due date of rent till the date of payment is made” is quashed and set aside.

3. In the result, the appeals are allowed with no order as to costs.

R & P to be re-transmitted to the Reference Court forthwith.

[Akshay H. Mehta, J.]

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